

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

PATRICK H. SAYRE

APPELLANT/,

**v.
STATE OF MISSOURI**

RESPONDENT.

DOCKET NUMBER WD78975

DATE: June 28, 2016

Appeal From:

Sullivan County Circuit Court
The Honorable Tracey A. Mason-White, Judge

Appellate Judges:

Division One: Lisa White Hardwick, Presiding Judge, Alok Ahuja, Chief Judge and Cynthia L. Martin, Judge

Attorneys:

Ellen H. Flottman, Columbia, MO, for appellant.

Shaun J. Mackelprang, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

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No. WD78975

Sullivan County

Before Division One: Lisa White Hardwick, Presiding Judge, Alok Ahuja, Chief Judge and Cynthia L. Martin, Judge

Patrick Sayre appeals from the motion court's judgment denying his amended Rule 24.035 motion. Sayre argues that the motion court erred in denying the amended motion because his guilty pleas were not supported by an adequate factual basis. Sayre also argues that the motion court erred because it failed to make a finding as to whether he was abandoned by post-conviction counsel's late filing of the amended motion.

REVERSE AND REMAND.

Division One holds: When an untimely amended motion is filed, the motion court has a duty to undertake an independent inquiry to determine if abandonment occurred. When an independent inquiry is not done, the reviewing court must remand the case back to the motion court. Sayre's amended motion was not timely filed and the motion court did not perform any inquiry as to whether Sayre had been abandoned by post-conviction counsel's late filing. This case must be remanded to the motion court for an independent inquiry into whether post-conviction counsel's late filed amended motion constituted abandonment.

The resolution of this issue negates the need to address Sayre's additional claims of error on appeal, which are denied as moot.

Opinion by Cynthia L. Martin, Judge

June 28, 2016

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